IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

MONDAY THE TWENTY THIRD DAY OF OCTOBER TWO THOUSAND AND SIX

: PRESENT :

THE HON'BLE SRI JUSTICE: **BILAL NAZKI**

AND

THE HON'BLE SRI JUSTICE: **NOOTY RAMAMOHANA RAO**

CRIMINAL APPEAL No.1233 of 2004

(Criminal Appeal under Sec. 374(2) of Cr.P.C. against the judgment of the Court of the III Additional Sessions Judge, Karimnagar made in SC.No. 191/2003 dt. 04-06-2004)

Between:

Mr. Khaleel Rahaman, S/o. Abdul Hafeez.

Appellant

AND

The State of A.P., rep. by Public Prosecutor, for SHO, P.S. Jagityal, Karimnagar District.

Respondent

The Appeal coming on for hearing upon perusing the petition and Grounds filed herein and upon hearing the arguments of Sri D.Bhaskar Reddy, Advocate for the Appellant and of the Public Prosecutor on behalf of the Respondent.

The Court made the following **ORDER:**

" This is an appeal filed by A.1 in SC.No. 191 of 2003 against the judgment dated. 04-06-2004 passed by the learned III Additional Sessions Judge, Karimnagar, convicting and sentencing him for the offence punishable under Section 302 IPC.

The appellant (A.1) has been convicted solely on he basis of Ex.P.11-Dying Declaration recorded by P.W.8-Judicial Magistrate of First Class, Jagtial.

The learned counsel for the appellant submits that along with Ex.P.11-Dying Declaration recorded by the Magistrate, there was another dying declaration (Ex.P.20) recorded by P.W.11, the then Head Constable, Jagitial Police Station, which became the basis for registering the First Information Report. The learned counsel further submits that in Ex.P.20, the deceased had stated that she got fire accidentally, and she had made oral statements also before some of the witnesses prior to her death stating that her catching fire was accidental.

We have found some interesting facets of this case. According to the prosecution story, the occurrence took place on 04-05-2002 at 7.00 a.m. The deceased was taken to the hospital, and the hospital intimated to the Police, who in turn intimated to the Magistrate (P.W.8) and requested him to record the Dying Declaration. P.W.8 reached the hospital at 10.00 a.m., and recorded Ex.P.11-statement of the deceased. The Police did not take this statement into consideration, but claimed that PW.11-Head Constable recorded the statement of deceased on the same date at 2.00 p.m., ie., after 4 hours of recording Ex.P.11, in which the deceased stated that she caught fire accidentally.

It appears from the record that nothing happened from May to August, and the case of women burning was registered on the basis of Ex. P.20-statement made allegedly by the deceased before PW.11-Head Constable. The charge was altered after four months of the date of occurrence somewhere in the month of August and this was done by one of the Police officers viz. T.Mahesh, who was the then Sub-Inspector of Police, Jagityal Town. He was cited as LW.17. Ex.P.11-dying declaration was recorded on 04-

05-2002 in which the deceased had attributed her burning to the accused-appellant, but no case was registered against the appellant till August. This could have been explained only by Sri T.Mahesh, the then Sub-Inspector of Police, Jagitial Town, but he was not examined as a witness before the Court.

Therefore, in order to do justice in the matter while exercising our powers under Section 391 Cr.P.C, we direct the learned Public Prosecutor to produce Sri T.Mahesh, the then Sub-Inspector of Police, Jagitial Town, as an additional witness in this case.

List this matter on 06-11-2006."

ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The III Additional Sessions Judge, Karimnagar.
2. The Judicial Magistrate of First Class, Jagtial, Karimnagar District.
3. Sri T.Mahesh, Sub-Inspector of Police, Jagityal Town, Karimnagar District. (**By Speed Post**)
4. The SHO, Jagityal Police Station, Karimnagar District.
5. Two CCs to the Public Prosecutor, High Court of A.P., Hyderabad. (**By Spl. Messenger**)
6. One CC to Sri D.Bhaskar Reddy, Advocate(OPUC)
7. Two spare copies.

SAH

HIGH COURT

BNJ & NRRJ

DATED: 23-10-2006

NOTE: LIST THIS MATTER ON
06-11-2006

ORDER

CRL.A.NO. 1233 OF 2004

DIRECTION

DRAFTED BY: SAH
APPROVED BY:
DRAFTED ON: 27-10-2006

HIGH COURT

BNJ & NRRJ

DATED: 23-10-2006

NOTE: LIST THIS MATTER ON 06-11-2006

ORDER

CRL.A.NO. 1233 OF 2004

DIRECTION